

Filed for intro on 02/20/97
HOUSE BILL 1249 By
Boyer

SENATE BILL 1655
By Jordan

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter
26 relative to weights and measures.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated Title 47, Chapter 26, is amended by deleting
Part 2 in its entirety and substituting instead the following new part appropriately designated:

SECTION _____. SHORT TITLE.

This Part may be cited as "Testing and Sealing--Use of Weights and Measures."

SECTION _____. DEFINITIONS

As used in this Act:

(a) The term "weight(s) and (or) measure(s)" means all weights and measures of every
kind, instruments and devices for weighing and measuring, and any appliance and accessories
associated with any or all such instruments and devices.

(b) The term "weight" as used in connection with any commodity or service means net
weight. When a commodity is sold by drained weight, the term means net drained weight.

(c) The term "correct" as used in connection with weights and measures means
conformance to all applicable requirements of this Act.

(d) The term "primary standards" means the physical standards of the State that serve
as the legal reference from which all other standards and weights are derived.

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(e) The term "secondary standards" means the physical standards that are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and regulations.

(f) The term "Commissioner" or "State Sealer" means the Commissioner of the Department of Agriculture or his/her duly appointed representative.

(g) The term "Department" means the Tennessee Department of Agriculture.

(h) The term "person" means both plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies, and associations.

(i) The term "sale from bulk" means the sale of commodities when the quantity is determined at the time of sale.

(j) The term "package", whether standard package or random package, means any commodity:

(1) enclosed in a container or wrapped in any manner in advance of wholesale or retail sale or

(2) whose weight or measure has been determined in advance of wholesale or retail sale.

An individual item or lot of any commodity on which there is marked a selling price based on an established price per unit of weight or of measure, shall be considered a package (or packages).

(k) The term "net weight" means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, and coupons, except that, depending on the type of service rendered, packaging materials may be considered to be part of the service. For example, the service of shipping includes the weight of packing materials.

(l) The term “random weight package” means a package that is one of a lot, shipment, or delivery of packages of the same commodity with no fixed pattern of weights.

(m) The term “standard weight package” means a package that is one of a lot, shipment, or delivery of packages of the same commodity with identical net contents declarations; for example, 1 liter bottles or 12 fl oz cans of carbonated soda; 500 g or 5 lb bags of sugar; 100 m or 300 ft packages of rope.

(n) The term “commercial weighing and measuring equipment means weights and measures and weighing and measuring devices commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption, purchased, offered, or submitted for sale, hire, or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure.

(o) The term “International System of Units (SI)” means the modernized metric system as established in 1960 by the general Conference on Weights and Measures and interpreted or modified for the United States by the Secretary of Commerce.

(p) The term "State" means State of Tennessee.

(q) The term "Handbook 44" means "National Institute of Standards and Technology Handbook 44 Specifications, Tolerances, And Other Technical Requirements For Weighing And Measuring Devices".

(r) The term "NIST" means the National Institute of Standards and Technology which is an agency of the United States Department of Commerce.

(s) The term "accurate" means a piece of equipment when its performance or value--that is, its indications, its deliveries, its recorded representations, or its capacity or actual value, etc., as determined by tests, made with suitable standards--conforms to the standard within the applicable tolerances and other performance requirements. Equipment that fails so to conform is "inaccurate".

(t) The term "ton" means a unit of 2,000 pounds avoirdupois weight.

(u) The term "cord" means the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed. For the purpose of this Act, "ranked and well stowed" shall be construed to mean that pieces of wood are placed in a line or row, with individual pieces touching and parallel to each other, and stacked in a compact manner.

SECTION _____. SYSTEMS OF WEIGHTS AND MEASURES

The system of weights and measures in customary use in the United States and the International System of Units (SI), the modernized metric system of weights and measures, are jointly recognized and either one or both of these systems shall be used for all commercial purposes in the State. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the National Institute of Standards and Technology are recognized and shall govern weighing and measuring equipment and transactions in the State.

SECTION _____. PRIMARY STANDARDS.

(a) Weights and measures that are traceable to the U.S. prototype standards supplied by the Federal Government, or approved as being satisfactory by the National Institute of Standards and Technology, shall be the State primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the National Institute of Standards and Technology.

(b) The primary standards shall be kept in a place designated by the Commissioner and approved by NIST and shall not be removed from such place except for repairs or calibration.

(c) The primary standards shall be used only in verifying the secondary standards and for scientific purposes.

SECTION _____. SECONDARY AND FIELD STANDARDS

(a) The Commissioner may acquire by purchase at least one set of copies of the primary standards to be kept in a place designated by the Commissioner and to be known as

secondary standards, and also such field standards and other equipment as may be found necessary to carry out the provisions of this part.

(b) The secondary standards and field standards shall be verified upon their initial receipt and as often thereafter as deemed necessary by the Commissioner.

SECTION _____. STATE SEALER OF WEIGHTS AND MEASURES - SUPERVISION OF LOCAL SEALERS

(a) The Commissioner shall be the state sealer of weights and measures and he/she shall have the custody of the primary standards of weights and measures and of the other standards and equipment provided for in this part.

(b) The Commissioner shall have the general supervision over city sealers of weights and measures, county sealer of weights and measures, and over all weights and measures offered for sale, sold or in use in the state.

SECTION _____. TECHNICAL REQUIREMENTS FOR WEIGHING AND MEASURING DEVICES, PACKAGING AND LABELING, METHOD OF SALE OF COMMODITIES, AND TYPE EVALUATION.

(a) The specifications, tolerances, and other technical requirements for commercial, law enforcement, data gathering, and other weighing and measuring devices as adopted by the National Conference on Weights and Measures and published in National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices", and supplements thereto or revisions thereof, shall apply to weighing and measuring devices in the State, except insofar as modified or rejected by regulation.

(b) The Uniform Packaging and Labeling Regulation as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations", and supplements thereto or

revisions thereof, shall apply to packaging and labeling in the State, except insofar as modified or rejected by regulation.

(c) The Uniform Regulation for the Method of Sale of Commodities as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revision thereof, shall apply to the method of sale of commodities in the State, except insofar as modified or rejected by regulation.

(d) The Uniform Regulation for National Type Evaluation as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to type evaluation in the State, except insofar as modified or rejected by regulation.

SECTION _____. STATE WEIGHTS AND MEASURES AGENCY.

There shall be a weights and measures agency located for administrative purposes within the Department of Agriculture. This agency is charged with, but not limited to, performing the following functions on behalf of the citizens of the State:

(a) Assuring that weights and measures in commercial service within the State are suitable for their intended use, properly installed, and accurate, and are so maintained by their owner or user.

(b) Preventing unfair or deceptive dealing by weight or measure in any commodity or service advertised, packaged, sold, or purchased within this State.

(c) As deemed necessary, making available to all users of physical standards or weighing and measuring equipment the precision calibration and related metrological certification capabilities of the weights and measures facilities of the agency.

(d) Promoting uniformity, to the extent practicable and desirable, between weights and measures requirements of this State and those of other States and Federal agencies.

(e) Encouraging desirable economic growth while protecting the consumer through the adoption by rule of weights and measures requirements as necessary to assure equity among buyers and sellers.

(f) Maintaining a weights and measures laboratory that meets the requirements of and is traceable to the National Institute of Standards and Technology.

SECTION _____. POWERS AND DUTIES OF THE COMMISSIONER.

The Commissioner shall:

(a) Maintain traceability of the State standards to the national standards in the possession of the National Institute of Standards and Technology.

(b) Enforce the provisions of this Act.

(c) Issue reasonable regulations for the enforcement of this Act, which regulations shall have the force and effect of law.

(d) Establish labeling requirements, establish standards of weight, measure, or count, and reasonable standards of fill for any packaged commodity; and may establish requirements for open dating information and requirements for the presentation of cost-per-unit information.

(e) Grant any exemptions from the provisions of this Act or any regulations promulgated pursuant thereto when appropriate to the maintenance of good commercial practices within the State.

(f) Conduct investigations to ensure compliance with this Act.

(g) Delegate to appropriate personnel any of these responsibilities for the proper administration of this office.

(h) Test annually the standards of weight and measure used by any city or county weights and measures jurisdiction within the State, and approve the same when found to be correct.

(i) Inspect and test, as often as he deems necessary , weights and measures kept, offer, or exposed for sale.

(j) Inspect and test, as often as he deems necessary, to ascertain if they are correct, weights and measures commercially used:

(1) in determining the weight, measure, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or count, or,

(2) in computing the basic charge or payment for services rendered on the basis of weight, measure, or count.

(k) Test, from time to time, weights and measures used in checking the receipt or disbursement of supplies in institutions, for the maintenance of which funds are appropriated by the legislature of the State.

(l) Approve for use, and may mark, such weights and measures as are found to be correct, and shall reject and mark as rejected such weights and measures as are found to be incorrect. Weights and measures that have been rejected may be seized if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The Commissioner may condemn and may seize the weights and measures found to be incorrect that are not capable of being made correct.

(1) Weights and Measures that have been rejected under the authority of the Commissioner or of a sealer shall remain subject to the control of the rejecting authority until such time suitable repair or disposition thereof has been made as required by this section.

(2) The owners of such rejected weights and measures shall cause the same to be made correct within the time frame allowed by the rejecting authority; or in lieu of this, may dispose of the same, but only in such manner as is specifically authorized by the rejecting authority.

(3) Weights and measures that have been rejected may only be used again commercially by permission of the rejecting authority until repairs have been completed.

(m) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether they contain the amounts

represented and whether they are kept, offered, or exposed for sale in accordance with this Act or regulations promulgated pursuant thereto. In carrying out the provisions of this SECTION, the Commissioner shall employ recognized sampling procedures such as are designated in the National Institute of Standards and Technology Handbook 133. No person shall:

(1) Sell or keep, offer, or expose for sale any package or commodity or amount of commodity that has been ordered off sale or marked or tagged as provided in this SECTION, unless and until such package or amount of commodity has been brought into full compliance with legal requirements; or

(2) Dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this SECTION and has not been brought into compliance with legal requirements, in any manner except with the specific approval of the Commissioner.

(n) Prescribe, by regulation, the appropriate term or unit of weight or measure to be used, whenever the Commissioner determines that an existing practice of declaring the quantity of a commodity or setting charges for a service by weight, measure, numerical count, time, or combination thereof, does not facilitate value comparisons by consumers, or offers an opportunity for consumer confusion.

(o) Allow reasonable variations from the stated quantity of contents, which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce.

(p) Provide for the training of weights and measures personnel, and may also establish minimum training and performance requirements which shall then be met by all weights and measures personnel, whether county, city, or State. The Commissioner may adopt the training standards of the National Conference on Weights and Measures National Training Program.

(q) Investigate complaints made to him/her concerning violations of the provisions of this Act and pursuant regulations, and shall, upon his/her own initiative, conduct such investigations

as he/she deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this part and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

(r) Have the authority to establish reasonable inspection fees for commercial weighing and measuring equipment. Fees may also be established for weights and measures laboratory services. The fee schedule and method of collection shall be determined by the commissioner and all fees shall be applied to the department for the operations of this program.

(s) Verify advertised prices, price representations, and point-of-sale systems, as deemed necessary, to determine the accuracy of prices and computations and the correct use of the equipment, and if such system utilizes scanning or coding means in lieu of manual entry, the accuracy of prices printed or recalled from a database.

SECTION _____. SPECIAL POWERS.

When necessary for the enforcement of this Act or regulations promulgated pursuant thereto, the Commissioner is:

(a) Authorized to enter any commercial premises during different times of the day, including nights and weekends, except that in the event such premises are not open to the public, he/she shall first present his/her credentials and obtain consent before making entry thereto, unless a search warrant has previously been obtained.

(b) Empowered to issue rejection, violation, stop-use, hold, removal, condemnation, and seizure orders with respect to any weights and measures commercially used, and stop-sale, hold, condemnation, seizure, and removal orders with respect to any packaged commodities or bulk commodities kept, offered, or exposed for sale. It shall be unlawful for any person to use, remove from the premises specified, or fail to remove from the premises specified, any weight, measure, or package, or amount of commodity, material, article, device, product, or any other thing being used contrary to the terms of a rejection, violation, stop-use order, hold order,

removal order, condemnation order, or seizure order issued under the authority of this SECTION.

(c) Empowered to seize, for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale or sold in violation of the provisions of this Act or regulations promulgated pursuant thereto.

(d) Empowered to stop any commercial vehicle and, after presentation of his/her credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his/her possession concerning the contents, and require him/her to proceed with the vehicle to some specified place for inspection.

(e) Allowed to transfer the powers and duties given to and imposed upon him/her by the provisions of this Act to his/her duly authorized representatives acting under the instructions and at the direction of him/her.

SECTION _____. POWERS AND DUTIES OF LOCAL OFFICIALS

(a) Any weights and measures official appointed for a county or city shall have the duties and powers enumerated in this Act, excepting those duties reserved to the State by law or regulation. These powers and duties shall extend to their respective jurisdictions, except that the jurisdiction of a county official shall not extend to any city for which a weights and measures official has been appointed. No requirement set forth by local agencies may be less stringent than or conflict with the requirements of the State.

(b) Each city sealer and county sealer of weights and measures shall file with the Commissioner a fiscal year summary (July 1-June 30) of all weights and measures inspections and activities. The content, format, and due date of this summary shall be determined by the Commissioner.

(c) In cities and counties for which sealers of weights and measures have been appointed as provided for in this part, the Commissioner shall have concurrent authority to enforce the provisions of this part.

(d) The powers and duties relevant to weights and measures contained in this part shall be in addition to the powers granted to any such city or county by law or charter.

SECTION _____. MISREPRESENTATION OF QUANTITY.

No person shall:

- (a) sell, or expose for sale less than the quantity represented, nor
- (b) take more than the represented quantity when, as buyer, he/she furnishes the weight or measure by means of which the quantity is determined, nor
- (c) represent the quantity in any manner calculated or tending to mislead or in any way deceive another person.

SECTION _____. MISREPRESENTATION OF PRICING.

No person shall misrepresent the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive a person.

SECTION _____. METHOD OF SALE

Except as otherwise provided by the Commissioner, or by firmly established trade custom and practice:

- (a) commodities in liquid form shall be sold by liquid measure or by weight, and
- (b) commodities not in liquid form shall be sold by weight, by measure, or by count.

The method of sale shall provide accurate and adequate quantity information that permits the buyer to make price and quantity comparisons. The Commissioner may issue such reasonable regulations as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practices and are so determined and represented as accurate and informative to all parties at interest.

SECTION_____. SALE FROM BULK.

All bulk sales in which the buyer and seller are not both present to witness the measurement, all bulk deliveries of heating fuel, and all other bulk sales specified by rule or regulation of the commissioner, shall be accompanied by a delivery ticket containing the following information:

- (a) the name and address of the buyer and seller;
- (b) the date delivered;
- (c) the quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity, for example, when temperature compensated sales are made;
- (d) the unit price, unless otherwise agreed upon by both buyer and seller;
- (e) the identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale; and
- (f) the count of individually wrapped packages, if more than one, in the instance of commodities bought from bulk but delivered in packages.

One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of the delivery of the commodity, or shall be surrendered, on demand, to the Commissioner or his/her authorized representative or a city sealer or a county sealer, who, if he/she desires to retain it as evidence, shall issue a similar document in lieu of thereof to the purchaser: provided, that if the purchaser, himself/herself, carries away his/her purchase, the vendor shall be required only to give the purchaser at the time of sale a delivery ticket stating the weight, measure, or count of commodity delivered to him/her.

SECTION_____. INFORMATION REQUIRED ON PACKAGES.

Except as otherwise provided in this Act or by regulations promulgated pursuant thereto, any package, whether a random package or a standard package, kept for the purpose of sale, or offered or exposed for sale shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

(a) the identity of the commodity in the package, unless the same can easily be identified through the wrapper or container;

(b) the quantity of contents in terms of weight, measure, or count; and

(c) the name and place of business of the manufacturer, packer, or distributor, in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed.

SECTION _____. DECLARATION OF UNIT PRICE ON RANDOM WEIGHT PACKAGES.

In addition to the declarations required by the above SECTION of this Act, any package being one of a lot containing random weights of the same commodity, at the time it is offered or exposed for sale at retail, shall bear on the outside of the package a plain and conspicuous declaration of the price per kilogram or pound and the total selling price of the package.

SECTION _____. MISLEADING PACKAGING PROHIBITED - STANDARD OF FILL.

No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed or filled as to mislead the purchaser as to the quantity of the contents of the package and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed by the commodity in question by the Commissioner.

SECTION _____. ADVERTISING.

(a) Whenever a packaged commodity is advertised in any manner with the retail price stated, there shall be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or regulation to appear on the package. There shall not be included as part of the declaration required under this SECTION such qualifying terms as "when packed," "minimum," "not less than", or any other terms of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant," "full," and the like) that tends to exaggerate the amount of commodity in the package.

(b) Weights and measures or weighing and measuring equipment shall not be advertised in any manner using the terms "certified", "state certified", "approved", "state approved", "inspected", "state inspected", or terms of similar import.

SECTION _____. MEAT, POULTRY, SEAFOOD.

All meat, meat products, poultry, fish and seafood offered or exposed for sale or sold as food, shall be offered or exposed for sale and sold by weight unless otherwise designated by regulation.

SECTION _____. PROHIBITED ACTS.

Any person who, personally or by a servant or agent, or as the servant or agent of another person, performs any of the acts enumerated in this SECTION commits a Class C misdemeanor.

No person shall:

- (a) use or have in possession for use in commerce any incorrect weight or measure;
- (b) sell or offer for sale for use in commerce any incorrect weight or measure;
- (c) remove any tag, seal, or mark from any weight or measure without specific authorization from the proper authority;
- (d) hinder or obstruct any weights and measures official in the performance of his or her duties; or
- (e) violate any provisions of this statute or regulations promulgated under it.
- (f) impersonate the Commissioner, representative, or sealer.
- (g) dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation.
- (h) sale or offer or expose for sale, less than the quantity he/she represents of any commodity, thing or service.

(i) take more than the quantity he/she represents of any commodity, thing, or service when, as buyer, he/she furnishes the weight and measure by means of which the amount of the commodity, thing or service is determined.

(j) keep for the purpose of sale, advertise or offer or expose for sale, or sell any commodity, thing or service in a condition or manner contrary to law or regulation.

(k) use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer unless the consumer receives a label or ticket printed by the device that includes a declaration of net weight, unit price, and tare weight that has been deducted to obtain the net weight.

SECTION _____. RESTRAINING ORDERS AND INJUNCTIONS.

The Commissioner is authorized to apply to any court of competent jurisdiction for a restraining order, or a temporary or permanent injunction, restraining any person from violating any provisions of this Act.

SECTION _____. WARNING IN LIEU OF CRIMINAL OR CIVIL PENALTIES.

Nothing in this Act shall be construed as requiring the Commissioner to report for the institution of proceedings under this Act, minor violations of this Act, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable oral or written notice or warning.

SECTION _____. PRESUMPTIVE EVIDENCE.

Whenever there shall exist a weight or measure or weighing or measuring device in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that such weight or measure or weighing or measuring device is regularly used for the business purposes of that place.

SECTION _____. REGULATIONS TO BE UNAFFECTED BY REPEAL OF PRIOR ENABLING STATUTE.

The adoption of this Act or any of its provisions shall not affect any regulations promulgated pursuant to the authority of any earlier enabling statute unless inconsistent with this Act or modified or revoked by the Commissioner.

SECTION 2. Tennessee Code Annotated, Title 47, Chapter 26, is amended by deleting Part 4 in its entirety and by substituting instead the following new part appropriately designated:

SECTION _____. SHORT TITLE.

This Part may be cited as "Public Weighmaster."

SECTION _____. DEFINITIONS

As used in this Act:

(a) The term "public weighing" means the weighing, measuring, or counting, upon request, of vehicles, property, produce, commodities, or articles other than those that the weigher or his/her employer, if any, is either buying or selling.

(b) The term "public weighmaster" means any person who performs public weighing as defined above.

(c) The term "vehicle" means any device (except railroad freight cars) in, upon, or by which any property, produce, commodity, or article is or may be transported or drawn.

(d) The term "Commissioner" means the Commissioner of the Department of Agriculture or his duly appointed representative.

(e) The term "Department" means the Tennessee Department of Agriculture.

(f) The term "State" means State of Tennessee.

(g) The term "Weights and Measures Official" means any Department of Agriculture employee acting on behalf of the Department and/or appointed by the Commissioner.

(h) The term "certificate" means that document or instrument issued by a Public Weighmaster containing information specified in the SECTION titled, "Certificate: Required Entries".

(i) The term "NIST" means the National Institute of Standards and Technology which is an agency of the United States Department of Commerce.

(j) The term "Handbook 44" means "National Institute of Standards and Technology Handbook 44 Specifications, Tolerances, And Other Technical Requirements For Weighing And Measuring Devices".

SECTION _____. ENFORCING OFFICER: RULES AND REGULATIONS

The commissioner is authorized to enforce the provisions of this part and he may issue from time to time reasonable rules and regulations for the enforcement of this part, which shall have the force and effect of law. All rules and regulations under this part shall be promulgated by the commissioner, pursuant to the provisions of the Uniform Administrative Procedures Act.

SECTION _____. QUALIFICATIONS FOR WEIGHMASTER.

To receive authorization to act as a public weighmaster, a person must receive a license from the Commissioner. In order to qualify for a license, a person must:

- (a) be able to weigh or measure accurately;
- (b) be able to prepare correct certificates;
- (c) be a citizen of the United States;
- (d) be at least eighteen (18) years of age; and,
- (e) possess other qualifications required by regulations promulgated under the Act.

SECTION _____. LICENSE APPLICATION.

Using a form provided by the Commissioner, the applicant for a license as a public weighmaster shall furnish evidence that he/she has the qualifications required by this Act and regulations promulgated under the Act. It shall be the responsibility of an individual to request a license application form prior to engaging in public weighing.

SECTION _____. EVALUATION OF QUALIFICATIONS OF APPLICANTS

The Commissioner will determine the qualifications of the applicant based on:

- (a) the information provided on the application; and
- (b) supplementary information as determined by the Commissioner.

The Commissioner may also determine the qualifications of the applicant based on the results of an examination of the applicant's knowledge.

SECTION _____. ISSUANCE AND RECORDS OF LICENSES.

The Commissioner will:

- (a) grant licenses as public weighmasters to qualified applicants;
- (b) keep a record of all applications submitted and of all licenses issued;

SECTION _____. LICENSE FEES

The Commissioner shall have the authority to set fees for the administration and effective enforcement of the provisions of this Act. Before the issuance of a new license or renewal of a license as a public weighmaster, the applicant must pay a fee equal to \$25.00 per year to the Department. All funds collected under the provisions of this part shall be credited to the Department to be used as expendable receipts in the enforcement of this part.

SECTION _____. DENIAL OF LICENSE

The Commissioner shall reserve the right to limit or reject the application of any public weighmaster whose qualifications and/or past work record does not comply with those requirements outlined in this Act or pursuant regulations.

SECTION _____. EXPIRATION AND RENEWAL OF LICENSES

a. The Commissioner shall establish a system of license renewals at alternative intervals throughout the calendar year. Licenses issued under the alternative method are valid for twenty-four (24) months and shall expire on the last day of the last month of the license period. During a transition period, or at any time thereafter, when the Commissioner determines that the volume of work for any given interval is unduly burdensome or costly, either the licenses

or renewals, or both of them, may be issued for terms of not less than six (6) months nor more than eighteen (18) months. The application fee imposed for any license under the alternative interval method for a period of other than twenty-four (24) months shall be proportionate to the annual fee, except that the proportional fee shall be rounded out to the nearest quarter of a dollar (25 c). Application fees shall be non-refundable. While the Commissioner will attempt to forward Public Weighmaster License renewal forms to all currently licensed individuals, it is the licensed individual's ultimate responsibility to ensure that their license remains current.

b. A thirty-day grace period shall be given to renew licenses. After the grace period expires, a twenty-five dollar (\$25.00) late fee per month (not prorated per day) shall be levied on each renewal application received.

SECTION _____. EMPLOYMENT OF PUBLIC WEIGHMASTERS REQUIRED

Every stockyard, slaughterhouse, tobacco warehouse or loose floor, dairy products plant, cotton gin or compress, and agricultural grain or seed buying/receiving station which buys or sells commodities on a bulk basis shall have in its employ one or more public weighmasters. All livestock, tobacco, milk, cream, cotton, and agricultural grains or seeds which are purchased, processed, or sold on a bulk weight basis at the above mentioned establishments shall be weighed only by a public weighmaster. Any individual acting on behalf of himself/herself or an establishment that charges a fee, commission, or any type of payment to perform public weighing, shall also be licensed under the provisions of this act.

SECTION _____. CERTIFICATE: REQUIRED ENTRIES

(a) The certificate, when properly completed and signed shall be prima facie evidence of the accuracy of the measurements shown.

(b) The design of and the information to be furnished on a weight certificate may be prescribed by the Commissioner and will include, but not be limited to, the following:

(1) The name and license number of the public weighmaster.

(2) The kind of commodity weighed, measured, or counted.

(3) The name of the owner, agent, or consignee of the commodity.

(4) The name of the recipient of the commodity, if applicable.

(5) The date the certificate is issued.

(6) The consecutive number of the certificate, if applicable.

(7) The identification, including the identification number, if any, of the carrier transporting the commodity, and the identification number or license number of the vehicle, if applicable.

(8) Other information needed to distinguish or identify the commodity from a like kind.

(9) The number of units of the commodity, if applicable.

(10) The measure of the commodity, if applicable.

(11) The weight of the commodity and the vehicle or container (if applicable) broken down as follows:

(i) The gross weight of the commodity and the associated vehicle or container.

(ii) The tare weight of the unloaded vehicle or container; or

(iii) Both the gross and tare weight and the resultant net weight of the commodity.

(12) Signature or initials of the public weighmaster who determined the weight, measure or count.

SECTION _____. CERTIFICATE: EXECUTION, REQUIREMENTS.

(a) When completing a certificate, a public weighmaster shall:

(1) enter the measurement values to clearly show that the measurements were actually determined;

(2) enter only the measurement values personally determined;

(3) not enter measurement values determined by other persons.

(b) If the certificate provides for entries of gross, tare, or net, the public weighmaster shall:

(1) strike out or otherwise cancel the printed entries for the values not determined; or

(2) enter the scale and date on which the values were determined on the certificate if the values were not determined on the same scale or on the same date shown on the certificate.

SECTION _____. OATH - COMPENSATION - SEAL

(a) Each public weighmaster shall, before entering upon his/her duties, make oath to execute faithfully his/her duties and file the same with the commissioner.

(b) The issuance of a public weighmaster license shall not obligate the state to pay to the licensee any compensation for his/her services as a public weighmaster.

(c) Each public weighmaster may, at his/her own expense, provide himself/herself with an impression seal. His/her name and the word "Tennessee" shall be inscribed around the outer margin of the seal and the words "Licensed Weighmaster" or "Public Weighmaster" shall appear in the center thereof. The seal may be impressed upon each weight certificate issued by a public weighmaster.

SECTION _____. MEASUREMENT PRACTICES AND EQUIPMENT USED

A public weighmaster shall use measurement practices and equipment:

(a) in accordance with the requirements of the latest edition of NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices;"

(b) examined, tested, and approved for use by a weights and measures official of this State.

(c) suitable for the weighing of the amount and kind of material to be weighed.

SECTION _____. SCALE USED - CAPACITY, PLATFORM SIZE, ONE-DRAFT WEIGHING

(a) A public weighmaster shall not weigh a vehicle, or combination of vehicles, when part of the vehicle or connected combination, is not resting fully, completely, and as one entire unit on the scale.

(b) When weighing a combination of vehicles that will not rest fully, completely, and as one complete unit on the scale platform,

(1) the combination shall be disconnected and weighed in single drafts; and

(2) the weights of the single drafts may be combined in order to issue a single certificate for the combination, provided that the certificate indicates that the total represents a combination of single draft weighings.

SECTION _____. SCALES OPEN TO VIEW

It shall be the duty of each public weighmaster to permit any interested party to read the indications on the weighing device or on an accurately projected image of the weight indicator when a commodity is weighed. In the event the public weighmaster fails or refuses to permit an interested party to observe the weighing of a commodity at such time, the interested party shall have the right to have the commodity immediately reweighed without any additional charges.

SECTION _____. COPIES OF CERTIFICATES

A public weighmaster shall keep and preserve for a period of at least one (1) year a legible copy of each certificate issued by him or her. The certificates shall be available for inspection by any weights and measures official of this State during normal office hours.

SECTION _____. RECIPROCAL ACCEPTANCE OF CERTIFICATES

The Commissioner is authorized to recognize and accept certificates issued by licensed public weighmasters of other States or Federal agencies that recognize and accept certificates issued by public weighmasters of this State.

SECTION _____. OPTIONAL LICENSING

The following persons shall be authorized, but are not required, to obtain licenses as public weighmasters:

(a) a law enforcement or weights and measures official, or other qualified employee of a state, city, or county agency or institution when acting within the scope of his/her official duties.

The commissioner shall be authorized, but is not required, to waive the registration fee for these individuals;

(b) a person weighing property, produce, commodities, or article:

(1) that he/she or his/her employer is either buying or selling; or

(2) in conformity with the requirements of Federal statutes or the statutes of this State relative to warehousemen or processors.

SECTION _____. PROHIBITED ACTS

It is a prohibited act for any person

(a) without a valid license to:

(1) assume the title of public weighmaster, or any title of similar import;

(2) perform the duties or acts to be performed by public weighmaster;

(3) hold himself or herself out as a public weighmaster;

(4) issue any certificate, ticket, memorandum, or statement for which a fee is charged;

(5) engage in full-time or part-time business of measuring for hire.

(b) to use or operate any device for certification purposes that does not meet, nor in a manner not in accordance with, the requirements of the latest edition of NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices;"

(c) to falsify a certificate or to falsely certify any gross, tare, or net weight or measure required by the Act to be on the certificate;

(d) to refuse without cause to weigh or measure any article or thing which it is his/her duty to weigh or measure, or refuse to state in any certificate anything required to be therein;

(e) to hinder or obstruct in any way the Commissioner or his/her authorized agent in the performance of the Commissioner's official duties under this Act;

(f) to violate any provision of this Act or any regulation promulgated under this Act,

(g) to delegate his/her authority to any person not licensed as a public weighmaster;

(h) to request a false certificate or to request a public weighmaster to weigh, measure, or count any vehicle, property, produce, commodity, or article falsely or incorrectly;

(i) to issue a certificate simulating the certificate in the Act;

(j) to use or have in his/her possession a device which has been altered to facilitate fraud.

SECTION _____. SUSPENSION AND REVOCATION OF LICENSE

The Commissioner is authorized to suspend or revoke the license of any public weighmaster:

(a) when, after a formal or informal hearing held following 10 days notice to the licensee, he/she is satisfied that the licensee has violated any provision of this Act or of any regulation under this Act;

(1) Upon such hearing the person cited may be heard in person or with counsel, or both, may present evidence, and may cross-examine witnesses.

(2) A full and complete record of such hearing shall be recorded and any party to the proceedings, upon request, shall be supplied with a transcript of such proceedings at the usual cost.

(3) The commissioner is hereby authorized, at his/her discretion, to appoint and designate a hearing officer who shall preside at the hearing in the place or in the absence of the commissioner. The hearing officer shall have power and authority to conduct the same, to administer oaths, and make findings of fact, conclusions of law, and the proposed order based thereon. If the commissioner concurs, he/she shall issue the order; or he/she may upon review of the record make such findings, conclusions and issue such order as in his/her discretion the record justifies.

(b) when the licensee has been convicted in any court of competent jurisdiction of violating any provision of this Act or of any regulation under this Act; or

(c) when the licensee is convicted of any felony.

SECTION _____. REVOCATION PROCEEDINGS

If the Commissioner suspends or revokes a Public Weighmaster License, the revokee may appeal the decision through the appropriate court of law in Davidson County, Tennessee.

SECTION _____. CRIMINAL PENALTIES

Any person who, by himself/herself, by his/her servant or agent, or as the servant or agent of another person, commits any prohibited acts enumerated in this statute or pursuant regulations or violates any other provision of this Act shall be guilty of a Class C misdemeanor.

SECTION _____. RESTRAINING ORDER AND INJUNCTION

The Commissioner is authorized to apply to any court of competent jurisdiction for a restraining order, or a temporary or permanent injunction, restraining any person from violating any provision of this Act.

SECTION _____. WARNING IN LIEU OF CRIMINAL OR CIVIL PENALTIES

Nothing in this Act shall be construed as requiring the Commissioner to report for the institution of proceedings under this Act, minor violations of this Act, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable oral or written notice or warning.

SECTION _____. PUBLICATION OF LISTS OF LICENSED PUBLIC WEIGHMASTERS

The Commissioner may publish, from time to time as he/she deems appropriate, and may supply upon request, lists of Licensed Public Weighmasters.

SECTION 3. Tennessee Code Annotated, Title 47, Chapter 26, is amended by deleting Part 5 in its entirety and by substituting instead the following new part appropriately designated:

SECTION _____. SHORT TITLE.

This Part may be cited as "Serviceperson Registration."

SECTION _____. DEFINITIONS.

(a) The term "registered serviceperson" shall be construed to mean any individual who for hire, award, commission, or any other payment of any kind, installs, services, repairs, or

reconditions a commercial weighing or measuring device, and who applies for registration with the Commissioner.

(b) The term "registered service agency" shall be construed to mean any agency, firm, company, or corporation employing more than two (2) registered servicepersons that for hire, award, commission, or any other payment of any kind installs, services, repairs, or reconditions a commercial weighing or measuring device, and that registers itself as such with the Commissioner. Under agency registration, identification of individual servicepersons shall be required.

(c) The term "Commercial and Law-Enforcement Weighing and Measuring Device" shall be construed to include any weight or measure or weighing or measuring device commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption, purchased, offered, or submitted for sale, hire, or award, or in computing any basic charge or payment for service rendered on the basis of weight, measure, or count. It shall also include any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects the accuracy of the device. It also includes weighing and measuring equipment in official use for the enforcement of laws or for the collection of statistical information by government agencies.

(d) The term "Commissioner" means the Commissioner of Agriculture or his duly appointed representative.

(e) The term "Department" means the Tennessee Department of Agriculture.

(f) The term "NIST" means the National Institute of Standards and Technology which is an agency of the United States Department of Commerce.

(g) The term "Handbook 44" means "National Institute of Standards and Technology Handbook 44 Specifications, Tolerances, And Other Technical Requirements For Weighing And Measuring Devices".

SECTION ____ . MINIMUM EQUIPMENT.

Applicants must have available sufficient standards and equipment to adequately test devices as set forth in the "Notes" SECTION of each applicable code in the most recent edition of NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices." When applicable, this equipment must meet the specifications of National Institute of Standards and Technology Handbook 105-1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Weights (NIST Class F), "National Institute of Standards and Technology Handbook 105-2, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Measuring Flasks," or National Institute of Standards and Technology Handbook 105-3, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards" or other applicable handbooks, manuals, technical papers published or referenced by NIST.

SECTION ____ . REGISTRATION.

(a) An individual or agency qualified by training or experience must apply for registration to service weighing or measuring devices only on an application form supplied by the Commissioner. It shall be the individual's or agency's responsibility to request the application form prior to servicing weighing and measuring devices. No person or firm shall engage in this state in the business of installing, servicing, repairing, or reconditioning a commercial weighing or measuring device, without first having registered to do so in accordance with this part. A local, state, or federal government weights and measures regulatory employee shall not be eligible for registration. Said form, duly signed and witnessed, shall include certification by the applicant that the individual or agency is fully qualified to install, service, repair, or recondition whatever devices for the service of which competence is being registered; has in possession or available for use, and shall use, all necessary testing equipment and standards; and has full

knowledge of all appropriate weights and measures laws, orders, rules, regulations and has a copy of the most recent edition of National Institute of Standards and Technology Handbook 44 or document that replaces it. An applicant also shall submit appropriate evidence or references as to qualifications. The Commissioner may also determine the qualifications of the applicant based on the results of an examination of the applicants knowledge. The Commissioner is authorized to reject or limit any application.

(b) Those individuals or agencies that provide such service to commercial weighing and measuring devices that does not affect the accuracy of measurement of the device, accuracy of charges or fees derived by the use of the device, or the metrological integrity of the device, need not be, but may choose to become, registered with this Department. Examples of those services include, but are not limited to, replacement of hoses or nozzles on petroleum dispensers, repairs of leaks around couplings, fittings, etc.

SECTION _____.CERTIFICATE OF REGISTRATION.

(a) The Commissioner will review and check the qualifications of each applicant. The Commissioner shall issue to the applicant a "Certificate of Registration," including an assigned registration number if it is determined that the applicant is qualified. The "Certificate of Registration" will expire twenty-four (24)months from the date of issuance.

(b) The Commissioner shall have the authority to designate specific classifications of registration of servicepersons and service agencies in accordance with the type, capacity, etc. of commercial weighing and measuring devices which are to be installed, serviced, repaired, or reconditioned in this state.

(c) For the benefit of the users, manufacturers, and distributors of commercial weighing and measuring devices, it shall be the policy of the Commissioner of Agriculture, hereinafter referred to as "Commissioner," to accept registration of (a) an individual and (b) an agency providing acceptable evidence that he, she, or it is fully qualified by training or experience to install, service, repair, or recondition a commercial weighing or measuring device; has a

thorough working knowledge of all appropriate weights and measures laws, orders, rules, and regulations; and has possession of or available for use, and will use calibrated weights and measures standards and testing equipment appropriate in design and adequate in amount.

(d) The Commissioner shall check the qualifications of each applicant to ensure that each applicant has available sufficient standards and equipment.

(e) It shall also be the policy of the Department to issue to qualified applicants, whose applications for registration are approved, a "Certificate of Registration." This gives authority to remove rejection seals and tags placed on commercial and law-enforcement weighing and measuring devices by authorized weights and measures officials, to place in service repaired devices that were rejected, to place in service devices that have been newly installed, and to provide service on commercial weighing and measuring devices.

(f) The Commissioner is NOT guaranteeing the work or fair dealing of a Registered Serviceperson or Service Agency. He/she may, however, remove from the registration list any Registered Serviceperson or Service Agency that performs unsatisfactory work or takes unfair advantage of a device owner.

(g) Registration with the Commissioner shall be mandatory. The Commissioner shall reserve the right to limit or reject the application of any Serviceperson or Service Agency and to revoke his, her, or its permit.

SECTION _____. PRIVILEGES AND RESPONSIBILITIES OF A REGISTRANT.

A bearer of a Certificate of Registration shall have the authority to remove an official rejection tag or seal placed on a weighing or measuring device by the authority of the Commissioner; place in service, until such time as an official examination can be made, a weighing or measuring device that has been officially rejected; place in service, until such time as an official examination can be made, a new or used weighing or measuring device and to provide service work on commercial weighing and measuring devices. The Registered Serviceperson or Service Agency is responsible for installing, repairing, and adjusting devices such that the

devices are adjusted as closely as practicable to zero error and comply with all applicable sections of Handbook 44.

SECTION _____. PLACED IN SERVICE REPORTS, EQUIPMENT REJECTION/
VIOLATION NOTICES, REPORTING OF SERVICE WORK

(a) The Commissioner shall furnish each Registered Serviceperson and Registered Service Agency with a sample report form to be known as "Placed In Service Report." Such form shall be executed in triplicate, shall include the assigned registration number, and shall be signed by the Registered Serviceperson who installed the device. This form shall be completed accurately and in its entirety immediately after a new or used device is placed in service, with the original of the properly executed Placed In Service Report to be forwarded to the State Weights and Measures Office within 24 hours. The duplicate copy of the report shall be given to the owner or operator of the device, and the triplicate copy of the report shall be retained by the Registered Serviceperson or Agency. This is the only acceptable form for reporting the installation of new or used weighing and measuring devices.

(b) It shall be the responsibility of any registered or unregistered person or agency that sells or conveys a weighing or measuring device to an individual or establishment in this state, that will be used for commercial purposes, to complete and forward a Placed In Service Report to the State Weights and Measures Office as outlined above. The Placed In Service Report shall be completed and forwarded to the State Weights and Measures Office regardless of whether the device is installed and/or calibrated on site by Handbook 44 procedures or factory calibrated and transported to its location for use without any additional installation or calibration procedures.

(c) A Registered Serviceperson shall complete accurately and in its entirety, the Official Notice of Equipment Rejection/Violation, or similar form, left at an establishment where a weighing or measuring device has been rejected or found in violation by a state weights and measures official. This form must be returned to the State Weights and Measures Office within

24 hours, together with any official rejection tag(s) removed from the device(s) after the device(s) has been brought into compliance.

(d) The Commissioner, as he/she deems appropriate, may require the reporting or notification by a registered serviceperson or agency of any routine or non-routine service work performed on commercial weighing or measuring devices. Such reporting or notification shall be in a format and on a timeframe as designated by the Commissioner.

SECTION ____ .EXAMINATION AND CALIBRATION OR CERTIFICATION OF STANDARDS AND TESTING EQUIPMENT.

A Registered Serviceperson and a Registered Service Agency shall submit, at least biennially (every two (2) years) to the Commissioner, for examination and certification, any standards and testing equipment that are used, or to be used, in the performance of the service and testing functions with respect to weighing and measuring devices for which competence is registered. A Registered Serviceperson or Agency shall not use in servicing commercial weighing or measuring devices any standards or testing equipment that have not been certified by the Commissioner. Standards calibrated by another State weights and measures laboratory that can show current traceability to the National Institute of Standards and Technology will also be recognized as standards suitable for use by Registered Servicepersons or Service Agencies in this State. Copies of laboratory certificates from another state weights and measures lab must be submitted along with Serviceperson License application forms when applying for registration in this state.

SECTION ____ . REJECTION, REMOVAL FROM USE, SEIZURE OF EQUIPMENT.

The Commissioner is authorized to reject, remove from use, or seize weighing or measuring devices installed, serviced, repaired, or reconditioned by any licensed or unlicensed individual or agency for good cause which shall include but not be limited to: taking of unfair advantage of an owner of a device; failure to have test equipment or standards certified; failure to use adequate testing equipment; failure to adjust Commercial or Law-Enforcement Devices to

comply with Handbook 44 subsequent to service, repair, or installation; failure to accurately and completely submit required forms to the State Weights and Measures Office in the manner prescribed.

SECTION ____ REGISTRATION FEES - EXPIRATION OF CERTIFICATES -
DISPOSITION OF FUNDS.

(a) The Department shall charge a fee equivalent to twenty-five dollars (\$25.00) per year per registered serviceperson. Each service agency employing more than two (2) registered servicepersons shall pay a service agency registration fee equivalent to fifty dollars (\$50.00) per year. Such service agency registration fee shall not exempt the agency or individual from paying the required serviceperson registration fee. If an agency has more than one (1) office or branch, each office or branch must be licensed as outlined above.

(b) The Commissioner shall establish a system of license renewals at alternative intervals which will allow for the distribution of the license renewals at alternative intervals and distribute the license workload as uniformly as is practicable throughout the calendar year. Licenses issued under the alternative method are valid for twenty-four months, and shall expire on the last day of the last month of the license period. During a transition period, or at any time thereafter when the Commissioner determines that the volume of work for any given interval is unduly burdensome or costly, either licenses or renewals, or both of them may be issued for terms of not less than six (6) months nor more than eighteen (18) months. The fee imposed for any license under the alternative interval method for a period of other than twenty-four (24) months shall be proportionate to the annual fee and modified in no other manner, except that the proportional fee shall be rounded to the nearest quarter of a dollar (25 ¢). While the Commissioner will attempt to forward Certificate of Registration renewal forms to all currently licensed persons and agencies, it is the licensed persons and agency's ultimate responsibility to ensure that their registration remains current.

(c) A thirty-day grace period shall be given to renew licenses. After the grace period expires, a twenty-five dollar (\$25.00) late fee (not prorated per day) shall be levied on each renewal application.

(d) All funds collected under the provisions of this part shall be credited to the Department as expendable receipts to be used for the enforcement of this part.

SECTION _____. RECIPROCAL AGREEMENTS. The Commissioner may enter into an informal reciprocal agreement with any other state or states with similar registration policies whereby the registered servicepersons and the registered service agencies of the party states are granted reciprocal authority of certification of standards and testing equipment.

SECTION _____. REVOCATION OF CERTIFICATE OF REGISTRATION.

(a) The Commissioner is authorized to suspend or revoke a Certificate of Registration for good cause which shall include but not be limited to: taking of unfair advantage of an owner of a device; failure to have test equipment or standards certified; failure to use adequate testing equipment; failure to adjust Commercial or Law-Enforcement Devices to comply with Handbook 44 subsequent to service, repair, or installation; failure to accurately and completely submit required forms to the State Weights and Measures Office in the manner prescribed.

(b) The Commissioner is authorized to suspend or revoke the license of any registered serviceperson/registered service agency:

(1) when, after a formal or informal hearing held following 10 days notice to the licensee, he/she is satisfied that the licensee has violated any provision of this Act or of any regulation under this Act;

(A) Upon such hearing the person cited may be heard in person or with counsel, or both, may present evidence, and may cross-examine witnesses.

(B) A full and complete record of such hearing shall be recorded and any party to the proceedings, upon request, shall be supplied with a transcript of such proceedings at the usual cost.

(C) The commissioner is hereby authorized, at his/her discretion, to appoint and designate a hearing officer who shall preside at the hearing in the place or in the absence of the commissioner. The hearing officer shall have power and authority to conduct the same, to administer oaths, and make findings of fact, conclusions of law, and the proposed order based thereon. If the commissioner concurs, he/she shall issue the order; or he/she may upon review of the record make such findings, conclusions and issue such order as in his/her discretion the record justifies.

(2) when the licensee has been convicted in any court of competent jurisdiction of violating any provision of this Act or of any regulation under this Act; or

(3) when the licensee is convicted of any felony.

SECTION ____ . REVOCATION PROCEEDINGS. If the Commissioner suspends or revokes a Serviceperson/Service Agency License, the revokee may appeal the decision through the appropriate court of law in Davidson County, Tennessee.

SECTION ____ . CRIMINAL PENALTIES. Any person who, by himself/herself, by his/her servant or agent, or as the servant or agent of another person, commits any prohibited acts in the statute of pursuant regulations or violates any other provision of this Act shall be guilty of a Class C misdemeanor.

SECTION ____ . RESTRAINING ORDERS AND INJUNCTIONS. The Commissioner is authorized to apply to any court of competent jurisdiction for a restraining order, or a temporary or permanent injunction, restraining any person from violating any provision of this Act.

SECTION ____ . WARNING IN LIEU OF CRIMINAL OR CIVIL PENALTIES. Nothing in this Act shall be construed as requiring the Commissioner to report for the institution of proceedings under this Act, minor violations of this Act, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable oral or written notice or warning.

SECTION _____. RULEMAKING POWER OF COMMISSIONER. The commissioner is authorized to enforce the provisions of this Act and he/she may issue from time to time reasonable rules and regulations for the enforcement of this Act, which shall have the force and effect of law. All rules and regulations under this Act shall be promulgated by the commissioner, pursuant to the provisions of the Uniform Administrative Procedures Act.

SECTION _____. PUBLICATIONS. The Commissioner may publish, from time to time as he/she deems appropriate, and may supply upon request, lists of Registered Servicepersons and Registered Service Agencies.

SECTION 4. All laws and parts of laws contrary to or inconsistent with the provisions of this Act are repealed; but as to offenses committed, liabilities incurred, and claims now existing thereunder, the existing law shall remain in full force and effect.

SECTION 5. This act shall take effect on July 1, 1997, the public welfare requiring it.